

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DANIEL C. KIMBALL,

Plaintiff

vs.

CIVIL NO. 3:06-CV-0733

P.B. WALTERS, et al.,

(JUDGE KOSIK)

Defendants

MEMORANDUM AND ORDER

AND NOW, THIS 9th DAY OF JANUARY, 2007, IT APPEARING TO THE COURT
THAT:

1. Plaintiff, Daniel C. Kimball, an inmate confined at the State Correctional Institution at Dallas, commenced the instant civil rights action pursuant to 42 U.S.C. § 1983 on April 7, 2006. An amended complaint was filed on May 15, 2006;
2. The matter was assigned to Magistrate Judge J. Andrew Smyser;
3. On November 27, 2006, the Magistrate Judge filed a forty-six (46) page Report and Recommendation, wherein he recommended that:

Based on the foregoing, it is recommended that the corrections defendant's motion (doc. 20) to dismiss less than all of the plaintiff's amended complaint be granted in part and denied in part. It is recommended that the plaintiff's claims for monetary damages against the correction defendants in their official capacities be dismissed, that the plaintiff's access to the courts claim be dismissed, that the plaintiff's claim against the corrections defendants based on threats and verbal abuse be dismissed, that the plaintiff's due process claim against

defendants Angelovic, McDermott and Dwyer based on the false misconducts be dismissed, that the plaintiff's claim against defendants Lucas and Wickiser based on the processing of his grievances be dismissed, and that the plaintiff's due process claim based on his transfer to another cell on March 28, 2006 be dismissed. It is recommended that the corrections defendants' motion to dismiss be otherwise denied. It is further recommended that the plaintiff be granted leave to file a second amended complaint to attempt, if appropriate, to plead an access to the courts claim upon which relief can be granted and to plead a retaliation claim upon which relief can be granted based on the misconducts issued by defendants Angelovic, McDermott and Dwyer. The plaintiff should be instructed that this second amended complaint shall be complete in all respects, shall be a new pleading which stands by itself as an adequate complaint without reference to the complaint or amended complaint already filed, and shall also be "simple, concise, and direct" as required by the Rules of Civil Procedure. It is further recommended that defendant Bohinski's motion (doc. 31) to dismiss the amended complaint be denied. Finally, it is recommended that the case be remanded to the undersigned for further proceedings.

5. No objections were filed to the Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

6. If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a *de novo* review of his claims. 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a Magistrate Judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

7. We have reviewed the Magistrate Judge's Report and we find the factual and legal analysis to be thorough and accurate. Therefore, we will adopt his recommendations in their entirety.¹

¹We note that subsequent to the filing of the Report and Recommendation several additional filings have been made by the parties. We refer these subsequent filings to the Magistrate Judge for disposition.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation of Magistrate Judge J. Andrew Smyser dated November 27, 2006 (Document 54) is adopted in its entirety; and
2. The above-captioned action is remanded to the Magistrate Judge for further proceedings.

s/Edwin M. Kosik
United States District Judge